IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.908 OF 2004

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Prakash Nagpal ...Petitioner

v/s.

Deepak K. Nagpal & Ors. ...Respondents

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Mr.Y.R.Naik for the Petitioner.

Mr.A.Y.Sakhare, Sr.Counsel for the Respondent No.1.

Mr.A.Sayyed, AGP for Respondents Nos. 3 to 6.

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CORAM: D.K.DESHMUKH, J

DATED: 5TH JULY, 2006

P.C.:

1. By this petition the Petitioner challenged the order dated 13-8-2003 passed by the Dy.Registrar,

Co.operative Societies under Section 79 of the Maharashtra Co.operative Societies Act (hereinafter referred to as the "Act") directing the Co.operative Society namely "The Cuffe Parade Persepolis Premises Co.operative Society Ltd. to split the share certificate issued by the Society in relation to Flat No.192 into two share certificates, one in relation to Flat No.192-A and other in relation Flat No.192-B. Reason that is given by the Deputy Registrar for making this order is an order passed by this Court dated 3-7-1990.

2. The order is challenged by the Petitioner on the ground that under the provisions of Section 79 of the Act the Deputy Registrar does not get power to make an order directing the Society to split the share certificate issued by it. It is also submitted that though the Deputy Registrar refers to the order made by this Court for issuing the direction, in fact, there is no such order made by this court. The order dated 3-7-1990 is in fact a consent decree passed in civil suit by this Court. Perusal of the order dated 3-7-1990 passed in Appeal No.200 of 1990 arising out of Suit No.2599 of 1986 shows that the order was made by the Division Bench of this Court and in that

appeal by consent of parties the Division Bench passed the consent decree in terms of the consent terms filed by the parties. By those consent terms the parties agreed to divide the Flat in the building of the Co.operative Society.

3. It is, therefore, apparent that there is no direction contained in the order passed by this court for division or splitting of the share certificate.

4. Reliance is placed by the learned Counsel appearing for the Respondent No.1 on the consent decree. The learned Counsel appearing for the Respondent No.1 submitted that in view of the conduct of the Petitioner of entering into the consent terms and thereafter permitting the society to seek opinion of the legal adviser in the matter disentitles the Petitioner to interference in his favour at the hands of this Court in its extra ordinary jurisdiction.

5. In my opinion, however, if the court finds that the order that has been impugned in the petition is an order made without the jurisdiction, then this petition will have to be entertained by this court even at the instance of the Petitioner. The order

itself says that it has been made under the provisions of Section 79 of the Act. Sub-section 1 of Section 79 of the Act is relevant. It reads as under:-

> 79(1) The Registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place, all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

6. Perusal of the above section shows that the power is conferred by this provision on the Registrar to issue directions to the society (i) to keep proper books of accounts; (ii) to furnish such statements and returns as the Registrar may direct; and (iii) to produce such records before the Registrar;

Sub-section (1) of Section 79 does not empower the Registrar to issue any direction to the society in relation to issuance of share certificate. To my mind, therefore, it is clear that Section 79 does not empower the Registrar at all to issue the direction which is issued by the order impugned in the petition.

7. Thus, I find that the order made by the Deputy Registrar which is impugned in the petition is an order made patently without jurisdiction. That the legal adviser of the society opined that the society can split the share certificate, if such splitting is approved by the Registrar, in my opinion, is not relevant. Basically what is to be seen is whether the Registrar had the jurisdiction and power to make the order which is impugned in the petition.

8. I find, after having gone through the provisions of Section 79 of the Act, that the Deputy Registrar had no such power and therefore the order is patently without jurisdiction and therefore is liable to be set aside. Rule in the petition is, therefore, made absolute in terms of prayer clause (a) with no order as to costs.

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